

ORIGINAL



BEFORE THE ARIZONA CORPORATION

**COMMISSIONERS**

Kristin K. Mayes, Chairman  
Gary Pierce  
Paul Newman  
Sandra D. Kennedy  
Bob Stump

2010 SEP 21 P 3: 56

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

**DOCKETED**

SEP 21 2010

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF  
GLOBAL WATER – PICACHO COVE UTILITIES  
COMPANY FOR A CERTIFICATE OF  
CONVENIENCE AND NECESSITY.

Docket No. SW-20494A-06-0769

IN THE MATTER OF THE APPLICATION OF  
GLOBAL WATER – PICACHO COVE WATER  
COMPANY FOR A CERTIFICATE OF  
CONVENIENCE AND NECESSITY.

Docket No. W-20495A-06-0769

**NOTICE OF FILING**

Global Water – Picacho Cove Utilities Company (“Picacho Utilities”) and Global Water –  
Picacho Cove Water Company (“Picacho Water”)(collectively “Global Utilities”) files the  
attached franchise agreements from Pinal County to supplement the evidence of franchises  
previously submitted on April 24, 2009.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of September 2010.

ROSHKA DEWULF & PATTEN, PLC

By

Michael W. Patten

Timothy J. Sabo

One Arizona Center

400 East Van Buren Street, Suite 800

Phoenix, Arizona 85004

1 Original + 15 copies of the foregoing  
2 filed this 21<sup>st</sup> day of September 2010 with:

3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
5 1200 West Washington  
6 Phoenix, Arizona 85007

7 Copies of the foregoing hand-delivered/mailed  
8 This 21<sup>st</sup> day of September 2010 to:

9 Lyn A. Farmer, Esq.  
10 Chief Administrative Law Judge  
11 Hearing Division  
12 Arizona Corporation Commission  
13 1200 West Washington  
14 Phoenix, Arizona 85007

15 Janice A. Alward, Esq.  
16 Chief Counsel, Legal Division  
17 Arizona Corporation Commission  
18 1200 West Washington  
19 Phoenix, Arizona 85007

20 Steve Olea  
21 Director, Utilities Division  
22 Arizona Corporation Commission  
23 1200 West Washington  
24 Phoenix, Arizona 85007

25 Brian Bozzo  
26 Compliance Enforcement Manager, Utilities Division  
27 Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

21 

**PICACHO COVE UTILITIES COMPANY**

**FRANCHISE**



OFFICIAL RECORDS OF  
PINAL COUNTY RECORDER  
LAURA DEAN-LYTLE

When recorded return to:

Clerk of the Board  
P.O. Box 827  
Florence, Arizona 85232

DATE/TIME: 04/22/09 1111  
FEE: \$0.00  
PAGES: 12  
FEE NUMBER: 2009-039908

---

**Creation of the Global Water – Picacho Cove Utilities Company Franchise**

**WHEREAS**, Global Water – Picacho Cove Utilities Company (Picacho Utilities) incorporated in Arizona in May 2006, is a wholly owned subsidiary of Global Water, Inc., a wholly owned subsidiary of Global Water Resources, LLC.

**WHEREAS**, Picacho Utilities has duly filed and presented to the Board of Supervisors of the County of Pinal, State of Arizona, its application for a new utility franchise for the purpose of constructing, operating, and maintaining wastewater lines and related appurtenances along, under, and across the public streets, alleys, and highways, except federal and state highways, within the unincorporated area of Pinal County, Arizona, as described in Exhibit "A" attached hereto (hereinafter "Application").

**WHEREAS**, after filing the Application for the public utility franchise, the Board of Supervisors of Pinal County ordered a public notice of its intent to consider the granting of the public utility franchise to be published in a newspaper of general circulation in Pinal County, Arizona, stating the time and place for consideration of the Application.

**WHEREAS**, the public hearing for consideration of the Application was scheduled for 9:30 a.m. on April 15, 2009, at the Pinal County Board of Supervisors Hearing Room, Administration Building No. 1, Florence, Arizona.

**WHEREAS**, said Application having come on regularly for hearing at 9:30 a.m. on April 15, 2009, and it appearing from the affidavit of the publisher of the Florence Reminder and Blade Tribune, that due and regular notice of such action has been published for at least once per week for three consecutive weeks prior to said hearing date, to wit: in the issues of the Florence Reminder and Blade Tribune, published on March 26, 2009, April 2, 2009, and April 9, 2009, and the matter being called for hearing at 9:30 a.m. on April 15, 2009, and an opportunity having been given to all interested parties to be heard.

**WHEREAS**, the Board of Supervisors of Pinal County has the power to create a wastewater franchise under Arizona Revised Statute §40-283, as well as other applicable statutory provisions.

**NOW, THEREFORE,**

## Section 1: DEFINITIONS

The following terms used in this franchise shall have the following meanings:

- A. County: Pinal County, Arizona.
- B. Board: Board of Supervisors of Pinal County, Arizona.

---

- C. Grantor: Pinal County, by and through its Board of Supervisors.
- D. Grantee: Global Water – Picacho Cove Utilities Company (Picacho Utilities), an Arizona corporation, its successors and assigns.
- E. Grantee's Facilities: Wastewater utility structures, equipment, lines, plants and related appurtenances.

## Section 2: GRANT

A. Grantor, on April 15, 2009, hereby grants to Grantee, for a period of twenty-five years, this new public utility franchise (hereinafter "Franchise") for the purpose of constructing, operating, and maintaining wastewater utility lines and related appurtenances along, under, and across public streets, alleys, and highways, and other rights of way, except federal and state highways, under the terms and conditions set forth herein within the unincorporated area of Pinal County, Arizona, as described in the Application (hereinafter "Franchise Area") and attached hereto as Exhibit A.

B. Nonexclusive Franchise.

(1) The Franchise granted hereby shall not be exclusive and shall not restrict in any manner the right of County in the exercise of any regulatory power which it now has or which may hereafter be authorized or permitted by the laws of the State of Arizona. Nothing herein shall be construed to prevent County from granting other like or similar franchises to any other person, firm, or corporation. County retains and shall ever be considered as having and retaining the right and power to allow and to grant to any other person, firm, corporation, or other companies, franchise rights and privileges to be exercised in and upon its public streets, alleys, highways, rights of way and public places, and such of the same and parts thereof as County may deem best or choose to allow, permit, give, or grant so long as such franchise rights and privileges shall not interfere with Grantee's use of the Grantee's Facilities.

(2) Nothing herein shall be construed to prevent County and its proper authorities from constructing and installing wastewater lines, sewers, gutters, or improvements to its public highways, streets, and alleys so long as said improvements do not interfere with Grantee's Facilities.

C. Reservation of Rights.

(1) County reserves the right to alter and amend the Franchise at any time and in any manner necessary for the safety or welfare of the public or to protect the public interests, and County reserves the right to impose at any time restrictions and limitations upon the use of the public streets, alleys, rights of way, and highways as County deems best for the public safety or welfare.

(2) County expressly reserves the right, after thirty (30) days written notice to Grantee, to modify, amend, alter, change, or eliminate any of the provisions of the Franchise which may become obsolete or impractical; and to impose such additional conditions upon Grantee as may be just and reasonable, such conditions to be those deemed necessary for the purpose of ensuring adequate service to the public; provided however, County shall not modify, amend, alter, change, or eliminate any of said provisions until after thirty (30) days and a public hearing, if such is legally required or requested by Grantee.

**Section 3: RENEWAL/SUBSEQUENT APPLICATION**

The Franchise herein granted shall expire on April 15, 2034; and upon its termination, Grantee shall cease to exercise under the terms of the Franchise the privileges herein granted. In the event Grantee desires a renewal of the Franchise herein granted, or a new franchise for a subsequent period, Grantee shall apply to and open negotiations with County for that purpose at least six (6) months before the expiration of the Franchise herein granted; but nothing herein shall be construed to bind County to grant such renewal or subsequent franchise.

**Section 4: REGULATION**

Grantee shall be subject to reasonable regulations for the maintenance by Grantee of such portion of the public streets, alleys, rights of way, and highways altered, damaged, or destroyed by Grantee, its agents, employees, or contractors, in exercising the privileges granted by the Franchise, including, but not limited to provisions for repair as set forth in Section 9(B) herein.

**Section 5: CONSTRUCTION, INSTALLATION AND REPAIRS**

A. Before beginning any construction for installation of Grantee's Facilities, Grantee shall submit a plan of proposed construction to the Pinal County Engineer and shall not commence any construction until the plan of construction is approved by the County Engineer or his designate.

B. All work performed by Grantee, its agents, employees, or contractors, under the Franchise shall be done in the manner prescribed by County and subject to the supervision of County, and in strict compliance with all laws, ordinances, rules, and regulations of federal, state, and local governments.

C. No construction, reconstruction, repair, or relocation under the Franchise shall be commenced until written permits have been obtained from the proper County officials. In any permit so issued, such officials may impose such conditions and regulations as a condition of the granting of the same as are necessary for the purpose of protecting any structures, highways, streets, or rights of way and for the proper restoration of such structures, highways, streets, or rights of way, for the protection of the public and the continuity of pedestrian and vehicular traffic.

---

D. ~~No construction under the Franchise by Grantee shall impose upon County the duty to maintain any public street, alley, highway, or right of way unless County accepts said public street, alley, highway, or right of way into the county maintenance system as provided by law.~~

E. Grantee shall retain all right, title, and interest to the Grantee's Facilities within the Franchise Area.

#### **Section 6: INSPECTION**

County shall, if it deems it necessary, have the right to inspect the construction, operation, and maintenance of Grantee's Facilities to ensure the proper performance of the terms of the Franchise granted herein.

#### **Section 7: SUFFICIENCY, LOCATION AND MAINTENANCE**

All of Grantee's Facilities shall be in all respects adequate, efficient, substantial, and permanent in design and workmanship, and shall be so located, erected, and maintained in good order and repair so as not to interfere with the use, enjoyment, or safety of the public streets, alleys, highways, or rights of way.

#### **Section 8: EXPANSION**

Grantee may from time to time, during the term of the Franchise make such enlargements and extensions of its wastewater system as are necessary to adequately provide for the requirements of County and the inhabitants of the Franchise Area; provided that nothing herein shall compel Grantee to expand or enlarge its system beyond the economic and operating limits thereof. Such enlargements and extensions shall be made in accordance with County rules and regulations.

#### **Section 9: RELOCATION; REPAIR**

A. During the term of the Franchise, if County or any qualified authority having jurisdiction in the Franchise Area alters, repairs, improves, or changes the grade of any public street, alley, highway, or right of way in the Franchise Area, then and in such event, Grantee, at its own expense, shall, if reasonably required as a matter of public safety, promptly make such changes in the location,

structure, or alignment of its wastewater lines and related appurtenances as the County Engineer or the County Engineer's designee may deem necessary as provided in Section 9(B).

B. Within sixty (60) days after receiving written notice from County of needed changes or corrections in Grantee's Facilities, and upon the failure of Grantee to make such changes or corrections as set forth in Section 9(A) or to correct any damage to any public street, alley, highway, or right-of-way within the Franchise Area caused directly or indirectly by Grantee, its agents, employees, or contractors, County shall have the right to make, or cause such changes or corrections to be made at the expense of Grantee. In the event that any changes, corrections, or repairs are deemed an emergency by County, Grantee, upon receipt of notice of such an emergency, shall make such changes, corrections, or repairs deemed necessary by County to provide for health and safety concerns. In the event that Grantee does not make the necessary changes, corrections, or repairs within a reasonable period of time, County may make, or cause such changes, corrections, or repairs to be made at the expense of Grantee. Any expenses incurred for such changes, corrections, or repairs shall be due and payable within thirty (30) days of written demand by County to Grantee.

#### **Section 10: LIABILITY**

A. If any public street, highway, alley, way, bridge, sidewalk, public place, or other public facility is disturbed, altered, damaged, or destroyed solely by Grantee, its agents, employees, or contractors, in the construction, design, installation, operation, and maintenance of Grantee's Facilities under the Franchise, the same shall be promptly repaired, reconstructed, replaced, or restored by Grantee, without cost to County, as provided in Section 9(B), in as good condition as before Grantee's entry and to the satisfaction of County.

B. Grantee shall be responsible to every owner of property which shall be injured solely by the work of construction, installation, operation, or maintenance of Grantee's Facilities under the Franchise, and all physical damage done to such injured property through any sole act or omission of Grantee, its agents, employees, or contractors, arising out of said construction, installation, operation, or maintenance.

C. It is a condition of the Franchise that County shall not and does not by reason of the Franchise assume any liability of the Grantee whatsoever for injury to persons or damage to property.

#### **Section 11: INDEMNIFICATION**

Grantee by its acceptance of the Franchise agrees that throughout the entire term of this Franchise, Grantee, at its sole cost and expense, shall indemnify, defend, save, and hold harmless Pinal County, its elected officers, employees, and agents from any and all lawsuits, judgments, and claims for injury, death, and damage to persons and property, both real and personal, caused solely by the construction, design, installation, operation, or maintenance of Grantees Facilities by Grantee, its agents, employees, or contractors, within the Franchise Area. Indemnified expenses shall include, but not be limited to, litigation and arbitration expenses, and attorneys' fees.



## **Section 12: ACCEPTANCE BY GRANTEE / EFFECTIVE DATE FRANCHISE**

The Franchise shall be accepted by Grantee by written instrument in the form attached hereto as Exhibit "B" (hereinafter "Acceptance"), executed and acknowledged by it as a deed is required to be, and filed with the Clerk of the Pinal County Board of Supervisors within thirty (30) days after the date this Franchise is approved by County. This Franchise shall be effective upon delivery of the Acceptance to the Clerk of the Pinal County Board of Supervisors in the form required and within the time specified above.

---

## **Section 13: LIMITS ON GRANTEE'S RECOURSE**

A. Grantee by its acceptance of the Franchise acknowledges such acceptance relies upon Grantee's own investigation and understanding of the power and authority of the County to grant this Franchise. Grantee by its acceptance of the Franchise accepts the validity of the terms and conditions of the Franchise in their entirety and agrees it will not, at any time, proceed against County in any claim or proceeding challenging any term or provision of the Franchise as unreasonable, arbitrary, or void, or that County did not have the authority to impose such term or condition.

B. Grantee by accepting the Franchise acknowledges that it has not been induced to accept the same by any promise, verbal, or written, by or on behalf of County or by any third person regarding any term or condition of the Franchise not expressed therein. Grantee by its acceptance of the Franchise further pledges that no promise or inducement, oral or written, has been made to any employee or official of County regarding receipt of the Franchise.

C. Grantee by its acceptance of the Franchise further acknowledges that it has carefully read the terms and conditions of the Franchise and accepts without reservation the obligations imposed by the terms and conditions herein.

D. The Board's decision concerning its selection and awarding of the Franchise shall be final.

## **Section 14: FAILURE TO ENFORCE FRANCHISE**

Grantee shall not be excused from complying with any of the terms and conditions of the Franchise by any failure of County, upon any one or more occasions, to insist upon the Grantee's performance or to seek Grantee's compliance with any one or more of such terms or conditions.

## **Section 15: COMPLIANCE WITH THE LAW**

Grantee shall at all times, conduct its business under the Franchise in accordance with all federal, state, and local laws, rules and regulations, as amended, including any future amendments thereto as may, from time to time, be adopted.

## **Section 16: INTERPRETATION/GOVERNING LAW**

The interpretation and performance of the Franchise and of the general terms and conditions shall be in accordance with and governed by the laws of the State of Arizona.

## **Section 17: VENUE**

---

Exclusive venue for any legal action to enforce the provisions, terms, and conditions of the Franchise shall be the Superior Court of the State of Arizona in and for the County of Pinal, Florence, Arizona.

## **Section 18: SEVERABILITY**

If any section, provision, term, or covenant or any portion of any section, provision, term, or covenant of the Franchise is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on any remaining portion of such section, provision, term, or covenant or the remaining sections, provisions, terms, or covenants of the Franchise, all of which shall remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

## **Section 19: FORFEITURE**

A. If Grantee fails to comply with any of the provisions of this Franchise or defaults in any of its obligations hereunder, except for causes beyond the reasonable control of Grantee; and shall fail within thirty (30) days after written notice from County to commence, and within a reasonable time and not longer than sixty (60) days, complete the correction of such default or noncompliance, County shall, following public hearing, have the right to revoke this Franchise and all rights of Grantee hereunder. In the event Grantee makes a general assignment or general arrangement for the benefit of creditors; or a trustee or receiver is appointed to take possession of substantially all of Grantee's Facilities within the Franchise Area or of Grantee's interest in this Franchise, where possession is not restored to Grantee within thirty (30) days; or Grantee's Facilities within the Franchise Area are subject to an attachment, execution or other seizure of substantially all of the Grantee's Facilities within the Franchise Area or this Franchise, where such seizure is not discharged within thirty (30) days, County may declare this Franchise, and any expansion hereto, forfeited, and terminated.

B. Nothing herein contained shall limit or restrict any other legal rights that County may possess arising from such violations.

## **Section 20: REVOCATION OF FRANCHISE**

The Franchise may after due notice and hearing, be revoked by County for any of the following reasons:

- A. For false or misleading statements in, or material omissions from the application for and the hearing on the granting of the Franchise.
- ~~B. For any transfer or assignment of the Franchise or control thereof without County's written consent.~~
- C. For failure to comply with any of the material terms and conditions of the Franchise.
- D. Upon termination, revocation, or forfeiture of the Franchise, Grantee shall, within ninety days, sell the Grantee's Facilities to Grantor or the subsequent franchisee at a price negotiated between the Parties, or remove the Grantee's Facilities without cost to the Grantor. If any public street, highway, alley, way, bridge, sidewalk, public place, or other public facility is disturbed, altered, damaged, or destroyed due to the removal of the Grantee's Facilities, same shall be promptly repaired, reconstructed, replaced, or restored by Grantee, without cost to County, as provided in Section 9(B), in as good condition as before Grantee's entry and to the satisfaction of County.

## **Section 21: ASSIGNMENT/TRANSFER**

Grantee shall not assign or transfer any interest in the Franchise without the prior written consent of Grantor. Grantor shall not unreasonably withhold its consent to a proposed transfer.

## **Section 22: NOTICE**

Notices required under the Franchise shall be delivered or sent by certified mail, postage prepaid to:

Grantor:

Clerk of the Pinal County Board of Supervisors  
P.O. Box 827  
31 N. Pinal  
Florence, Arizona 85232

Grantee:

Global Water – Picacho Cove Utilities Company  
Attn: Graham Symmonds  
21410 N. 19<sup>th</sup> Ave., Ste. 201  
Phoenix, Arizona 85027

The delivery or mailing of such notice shall be equivalent to direct personal notice and shall be deemed to have been given at the time of delivery. Either party may change its address under this section by written notice to the other party.

### **Section 23: REMEDIES**

---

Rights and remedies reserved to the parties by the Franchise are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the parties may have with respect to the subject matter of the Franchise and a waiver thereof at any time shall not affect any other reservation of rights or remedies.

### **Section 24: RIGHT OF INTERVENTION**

County hereby reserves to itself, and Grantee hereby grants to County, the right to intervene in any suit, action, or proceeding involving any provision in the Franchise.

### **Section 25: BOOKS AND RECORDS**

Grantee shall maintain books and records that identify all of Grantee's underground facilities by type and location within the Franchise Area. Grantee shall make such books and records available to County upon County's request and without cost to County.

### **Section 26: AD VALOREM TAXES**

Grantee shall pay its ad valorem taxes before they become delinquent.

IN WITNESS WHEREOF, the Board of Supervisors of Pinal County, Arizona, by its Chairman and its Clerk, thereunto duly authorized, has hereunto set its hand and caused its official seal to be affixed on April 15, 2009

PINAL COUNTY BOARD OF SUPERVISORS



David Snider  
Chairman

ATTEST:

Sheri Cluff  
Sheri Cluff, Clerk of the Board

APPROVED AS TO FORM:

JAMES P. WALSH  
PINAL COUNTY ATTORNEY

Glenn C. Johnson 3/31/09  
Glenn C. Johnson, Deputy County Attorney

## **Exhibit A**

**Picacho Cove Water Company  
Picacho Cove Utilities Company  
Franchise Legal Description**

---

Township 6 South Range 8 East  
All of Sections 25 through 27, and 34 through 36

Township 6 South Range 9 East  
The W  $\frac{1}{2}$  of Section 29, all of sections 30 and 31, and the W  $\frac{1}{2}$  of 32

Township 7 South Range 8 East  
All of Sections 1 through 3, 10 through 15, 22 through 27, and 34 through 36

Township 7 South Range 9 East  
Sections 4 through 9, 15 through 22, all of sections 27 through 34.

Township 8 South Range 8 East  
Sections 1 through 3, 10 through 15, NE  $\frac{1}{4}$  of 22, and all of 23 through 25.

Township 8 South Range 9 East  
Sections 4 through 9, 16 through 20, W  $\frac{1}{2}$  of 21, all of sections 28 through 30, NE  $\frac{1}{4}$  of 31, all of sections 32 and 33, and the S  $\frac{1}{2}$  of 34.

Township 9 South Range 9 East  
Sections 1 through 4, NE  $\frac{1}{4}$  of 5, and all of section 10

Township 9 South Range 10 East  
Sections 1 through 6, and sections 8 through 17.

Approximately 63,629 acres.

Exhibit B

ACCEPTANCE OF FRANCHISE

To: Board of Supervisors Pinal County, Arizona

Grantee, Global Water – Picacho Cove Utilities Company, an Arizona corporation, does hereby ~~accept the non-exclusive grant of a new public utility franchise from Pinal County, Arizona,~~ (hereinafter "Franchise"), to construct, operate, and maintain wastewater utility lines and related fixtures along, under, and across present and future public streets, alleys, and highways, except state highways, within the unincorporated area of Pinal County, Arizona, as stated in its application for a new public utility franchise.

Grantee unconditionally accepts the Franchise and covenants to faithfully comply with, abide by, to observe and perform all the provisions, terms, and conditions of the Franchise. Grantee accepts such provisions, terms, and conditions and expressly waives any and all objections to the reasonableness or legality of any provisions of the same or any part thereof, or as to the legal right or authority of Pinal County to impose the same.

Grantee declares that the statements and recitals in this Franchise are correct, and Grantee declares it has made and does make the agreement, statements, and admissions in this Franchise recited to have been or to be made by Grantee.

Dated this 16<sup>th</sup> day of April, 2009.

GLOBAL WATER – PICACHO COVE  
UTILITIES COMPANY, an Arizona corporation

By: Cindy M. Liles

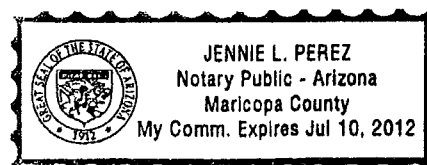
Title: Sec / Treasurer

STATE OF ARIZONA       )  
  ) ss.  
County of Pinal Maricopa )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of April, 2009, by Cindy M. Liles of Global Water – Picacho Cove Utilities Company, an Arizona corporation, and being authorized to do so, executed the foregoing instrument on behalf of the company for the purposes therein stated.

Jennie L. Perez  
Notary Public

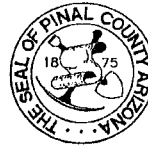
My Commission Expires: 7/10/2012



**PICACHO COVE WATER COMPANY**

**FRANCHISE**





OFFICIAL RECORDS OF  
PINAL COUNTY RECORDER  
LAURA DEAN-LYTLE

When recorded return to:

Clerk of the Board  
P.O. Box 827  
Florence, Arizona 85232

DATE/TIME: 04/22/09 1111  
FEE: \$0.00  
PAGES: 12  
FEE NUMBER: 2009-039907

**Creation of the Global Water – Picacho Cove Water Company Franchise**

---

**WHEREAS**, Global Water – Picacho Cove Water Company (Picacho Water) incorporated in Arizona in May 2006, is a wholly owned subsidiary of Global Water, Inc., a wholly owned subsidiary of Global Water Resources, LLC.

**WHEREAS**, Picacho Water has duly filed and presented to the Board of Supervisors of the County of Pinal, State of Arizona, its application for a new utility franchise for the purpose of constructing, operating, and maintaining water lines and related appurtenances along, under, and across the public streets, alleys, and highways, except federal and state highways, within the unincorporated area of Pinal County, Arizona, as described in Exhibit "A" attached hereto (hereinafter "Application").

**WHEREAS**, after filing the Application for the public utility franchise, the Board of Supervisors of Pinal County ordered a public notice of its intent to consider the granting of the public utility franchise to be published in a newspaper of general circulation in Pinal County, Arizona, stating the time and place for consideration of the Application.

**WHEREAS**, the public hearing for consideration of the Application was scheduled for 9:30 a.m. on April 15, 2009, at the Pinal County Board of Supervisors Hearing Room, Administration Building No. 1, Florence, Arizona.

**WHEREAS**, said Application having come on regularly for hearing at 9:30 a.m. on April 15, 2009, and it appearing from the affidavit of the publisher of the Florence Reminder and Blade Tribune, that due and regular notice of such action has been published for at least once per week for three consecutive weeks prior to said hearing date, to wit: in the issues of the Florence Reminder and Blade Tribune, published on March 26, 2009, April 2, 2009, and April 9, 2009, and the matter being called for hearing at 9:30 a.m. on April 15, 2009, and an opportunity having been given to all interested parties to be heard.

**WHEREAS**, the Board of Supervisors of Pinal County has the power to create a water franchise under Arizona Revised Statute §40-283, as well as other applicable statutory provisions.

**NOW, THEREFORE,**

**Section 1: DEFINITIONS**

The following terms used in this franchise shall have the following meanings:

- A. County: Pinal County, Arizona.
- ~~B. Board: Board of Supervisors of Pinal County, Arizona.~~
- C. Grantor: Pinal County, by and through its Board of Supervisors.
- D. Grantee: Global Water – Picacho Cove Water Company (Picacho Water), an Arizona corporation, its successors and assigns.
- E. Grantee's Facilities: Water utility structures, equipment, lines, plants and related appurtenances.

**Section 2: GRANT**

A. Grantor, on April 15, 2009, hereby grants to Grantee, for a period of twenty-five years, this new public utility franchise (hereinafter "Franchise") for the purpose of constructing, operating, and maintaining water utility lines and related appurtenances along, under, and across public streets, alleys, and highways, and other rights of way, except federal and state highways, under the terms and conditions set forth herein within the unincorporated area of Pinal County, Arizona, as described in the Application (hereinafter "Franchise Area") and attached hereto as Exhibit A.

B. Nonexclusive Franchise.

(1) The Franchise granted hereby shall not be exclusive and shall not restrict in any manner the right of County in the exercise of any regulatory power which it now has or which may hereafter be authorized or permitted by the laws of the State of Arizona. Nothing herein shall be construed to prevent County from granting other like or similar franchises to any other person, firm or corporation. County retains and shall ever be considered as having and retaining the right and power to allow and to grant to any other person, firm, corporation or other companies, franchise rights and privileges to be exercised in and upon its public streets, alleys, highways, rights of way and public places, and such of the same and parts thereof as County may deem best or choose to allow, permit, give or grant so long as such franchise rights and privileges shall not interfere with Grantee's use of the Grantee's Facilities.

(2) Nothing herein shall be construed to prevent County and its proper authorities from constructing and installing water lines, sewers, gutters, or improvements to its public highways, streets, and alleys so long as said improvements do not interfere with Grantee's Facilities.

C. Reservation of Rights.

(1) County reserves the right to alter and amend the Franchise at any time and in any manner necessary for the safety or welfare of the public or to protect the public interests, and County reserves the right to impose at any time restrictions and limitations upon the use of the public streets, alleys, rights of way, and highways as County deems best for the public safety or welfare.

~~(2) County expressly reserves the right, after thirty (30) days written notice to Grantee, to modify, amend, alter, change, or eliminate any of the provisions of the Franchise which may become obsolete or impractical; and to impose such additional conditions upon Grantee as may be just and reasonable, such conditions to be those deemed necessary for the purpose of ensuring adequate service to the public; provided however, County shall not modify, amend, alter, change, or eliminate any of said provisions until after thirty (30) days and a public hearing, if such is legally required or requested by Grantee.~~

**Section 3: RENEWAL/SUBSEQUENT APPLICATION**

The Franchise herein granted shall expire on April 15, 2034; and upon its termination, Grantee shall cease to exercise under the terms of the Franchise the privileges herein granted. In the event Grantee desires a renewal of the Franchise herein granted, or a new franchise for a subsequent period, Grantee shall apply to and open negotiations with County for that purpose at least six (6) months before the expiration of the Franchise herein granted; but nothing herein shall be construed to bind County to grant such renewal or subsequent franchise.

**Section 4: REGULATION**

Grantee shall be subject to reasonable regulations for the maintenance by Grantee of such portion of the public streets, alleys, rights of way, and highways altered, damaged, or destroyed by Grantee, its agents, employees or contractors, in exercising the privileges granted by the Franchise, including, but not limited to provisions for repair as set forth in Section 9(B) herein.

**Section 5: CONSTRUCTION, INSTALLATION AND REPAIRS**

A. Before beginning any construction for installation of Grantee's Facilities, Grantee shall submit a plan of proposed construction to the Pinal County Engineer and shall not commence any construction until the plan of construction is approved by the County Engineer or his designate.

B. All work performed by Grantee, its agents, employees, or contractors, under the Franchise shall be done in the manner prescribed by County and subject to the supervision of County, and in

strict compliance with all laws, ordinances, rules, and regulations of federal, state, and local governments.

C. No construction, reconstruction, repair, or relocation under the Franchise shall be commenced until written permits have been obtained from the proper County officials. In any permit so issued, such officials may impose such conditions and regulations as a condition of the granting of the same as are necessary for the purpose of protecting any structures, highways, streets, or rights of way and for the proper restoration of such structures, highways, streets, or rights of way, for the protection of the public and the continuity of pedestrian and vehicular traffic.

---

D. No construction under the Franchise by Grantee shall impose upon County the duty to maintain any public street, alley, highway or right of way unless County accepts said public street, alley, highway or right of way into the county maintenance system as provided by law.

E. Grantee shall retain all right, title, and interests to the Grantee's Facilities within the Franchise Area.

#### **Section 6: INSPECTION**

County shall, if it deems it necessary, have the right to inspect the construction, operation, and maintenance of Grantee's Facilities to ensure the proper performance of the terms of the Franchise granted herein.

#### **Section 7: SUFFICIENCY, LOCATION AND MAINTENANCE**

All of Grantee's Facilities shall be in all respects adequate, efficient, substantial, and permanent in design and workmanship, and shall be so located, erected, and maintained in good order and repair so as not to interfere with the use, enjoyment, or safety of the public streets, alleys, highways, or rights of way.

#### **Section 8: EXPANSION**

Grantee may from time to time, during the term of the Franchise make such enlargements and extensions of its water system as are necessary to adequately provide for the requirements of County and the inhabitants of the Franchise Area; provided that nothing herein shall compel Grantee to expand or enlarge its system beyond the economic and operating limits thereof. Such enlargements and extensions shall be made in accordance with County rules and regulations.

#### **Section 9: RELOCATION; REPAIR**

A. During the term of the Franchise, if County or any qualified authority having jurisdiction in the Franchise Area alters, repairs, improves, or changes the grade of any public street, alley, highway, or right of way in the Franchise Area, then and in such event, Grantee, at its own expense, shall, if

reasonably required as a matter of public safety, promptly make such changes in the location, structure, or alignment of its water lines and related appurtenances as the County Engineer or the County Engineer's designee may deem necessary as provided in Section 9(B).

B. Within sixty (60) days after receiving written notice from County of needed changes or corrections in Grantee's Facilities, and upon the failure of Grantee to make such changes or corrections as set forth in Section 9(A) or to correct any damage to any public street, alley, highway, or right-of-way within the Franchise Area caused directly or indirectly by Grantee, its agents, employees, or contractors, County shall have the right to make, or cause such changes or corrections to be made at the expense of Grantee. ~~In the event that any changes, corrections, or repairs are deemed an emergency by County, Grantee, upon receipt of notice of such an emergency, shall make such changes, corrections, or repairs deemed necessary by County to provide for health and safety concerns. In the event that Grantee does not make the necessary changes, corrections, or repairs within a reasonable period of time, County may make, or cause such changes, corrections, or repairs to be made at the expense of Grantee. Any expenses incurred for such changes, corrections, or repairs shall be due and payable within thirty (30) days of written demand by County to Grantee.~~

#### **Section 10: LIABILITY**

A. If any public street, highway, alley, way, bridge, sidewalk, public place, or other public facility is disturbed, altered, damaged, or destroyed solely by Grantee, its agents, employees, or contractors, in the construction, design, installation, operation, and maintenance of Grantee's Facilities under the Franchise, the same shall be promptly repaired, reconstructed, replaced or restored by Grantee, without cost to County, as provided in Section 9(B), in as good condition as before Grantee's entry and to the satisfaction of County.

B. Grantee shall be responsible to every owner of property which shall be injured solely by the work of construction, installation, operation or maintenance of Grantee's Facilities under the Franchise, and all physical damage done to such injured property through any sole act or omission of Grantee, its agents, employees or contractors, arising out of said construction, installation, operation or maintenance.

C. It is a condition of the Franchise that County shall not and does not by reason of the Franchise assume any liability of the Grantee whatsoever for injury to persons or damage to property.

#### **Section 11: INDEMNIFICATION**

Grantee by its acceptance of the Franchise agrees that throughout the entire term of this Franchise, Grantee, at its sole cost and expense, shall indemnify, defend, save, and hold harmless Pinal County, its elected officers, employees, and agents from any and all lawsuits, judgments and claims for injury, death and damage to persons and property, both real and personal, caused solely by the construction, design, installation, operation, or maintenance of Grantee's Facilities by Grantee, its agents, employees, or contractors, within the Franchise Area. Indemnified expenses shall include, but not be limited to, litigation and arbitration expenses, and attorneys' fees.

## **Section 12: ACCEPTANCE BY GRANTEE / EFFECTIVE DATE FRANCHISE**

The Franchise shall be accepted by Grantee by written instrument in the form attached hereto as Exhibit "B" (hereinafter "Acceptance"), executed and acknowledged by it as a deed is required to be, and filed with the Clerk of the Pinal County Board of Supervisors within thirty (30) days after the date this Franchise is approved by County. This Franchise shall be effective upon delivery of the Acceptance to the Clerk of the Pinal County Board of Supervisors in the form required and within the time specified above.

---

## **Section 13: LIMITS ON GRANTEE'S RECOURSE**

A. Grantee by its acceptance of the Franchise acknowledges such acceptance relies upon Grantee's own investigation and understanding of the power and authority of the County to grant this Franchise. Grantee by its acceptance of the Franchise accepts the validity of the terms and conditions of the Franchise in their entirety and agrees it will not, at any time, proceed against County in any claim or proceeding challenging any term or provision of the Franchise as unreasonable, arbitrary, or void, or that County did not have the authority to impose such term or condition.

B. Grantee by accepting the Franchise acknowledges that it has not been induced to accept the same by any promise, verbal, or written, by or on behalf of County or by any third person regarding any term or condition of the Franchise not expressed therein. Grantee by its acceptance of the Franchise further pledges that no promise or inducement, oral or written, has been made to any employee or official of County regarding receipt of the Franchise.

C. Grantee by its acceptance of the Franchise further acknowledges that it has carefully read the terms and conditions of the Franchise and accepts without reservation the obligations imposed by the terms and conditions herein.

D. The Board's decision concerning its selection and awarding of the Franchise shall be final.

## **Section 14: FAILURE TO ENFORCE FRANCHISE**

Grantee shall not be excused from complying with any of the terms and conditions of the Franchise by any failure of County, upon any one or more occasions, to insist upon the Grantee's performance or to seek Grantee's compliance with any one or more of such terms or conditions.

## **Section 15: COMPLIANCE WITH THE LAW**

Grantee shall at all times, conduct its business under the Franchise in accordance with all federal, state, and local laws, rules and regulations, as amended, including any future amendments thereto as may, from time to time, be adopted.

## **Section 16: INTERPRETATION/GOVERNING LAW**

The interpretation and performance of the Franchise and of the general terms and conditions shall be in accordance with and governed by the laws of the State of Arizona.

## **Section 17: VENUE**

~~Exclusive venue for any legal action to enforce the provisions, terms, and conditions of the Franchise~~ shall be the Superior Court of the State of Arizona in and for the County of Pinal, Florence, Arizona.

## **Section 18: SEVERABILITY**

If any section, provision, term, or covenant or any portion of any section, provision, term, or covenant of the Franchise is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on any remaining portion of such section, provision, term, or covenant or the remaining sections, provisions, terms, or covenants of the Franchise, all of which shall remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

## **Section 19: FORFEITURE**

A. If Grantee fails to comply with any of the provisions of this Franchise or defaults in any of its obligations hereunder, except for causes beyond the reasonable control of Grantee; and shall fail within thirty (30) days after written notice from County to commence, and within a reasonable time and not longer than sixty (60) days, complete the correction of such default or noncompliance, County shall, following public hearing, have the right to revoke this Franchise and all rights of Grantee hereunder. In the event Grantee makes a general assignment or general arrangement for the benefit of creditors; or a trustee or receiver is appointed to take possession of substantially all of Grantee's Facilities within the Franchise Area or of Grantee's interest in this Franchise, where possession is not restored to Grantee within thirty (30) days; or Grantee's Facilities within the Franchise Area are subject to an attachment, execution or other seizure of substantially all of the Grantee's Facilities within the Franchise Area or this Franchise, where such seizure is not discharged within thirty (30) days, County may declare this Franchise, and any expansion hereto, forfeited, and terminated.

B. Nothing herein contained shall limit or restrict any other legal rights that County may possess arising from such violations.

## **Section 20: REVOCATION OF FRANCHISE**

The Franchise may after due notice and hearing, be revoked by County for any of the following reasons:

- A. For false or misleading statements in, or material omissions from the application for and the hearing on the granting of the Franchise.
- B. For any transfer or assignment of the Franchise or control thereof without County's written consent.
- C. For failure to comply with any of the material terms and conditions of the Franchise.
- ~~D. Upon termination, revocation, or forfeiture of the Franchise, Grantee shall, within ninety~~  
days, sell the Grantee's Facilities to Grantor or the subsequent franchisee at a price negotiated between the Parties, or remove the Grantee's Facilities without cost to the Grantor. If any public street, highway, alley, way, bridge, sidewalk, public place, or other public facility is disturbed, altered, damaged, or destroyed due to the removal of the Grantee's Facilities, same shall be promptly repaired, reconstructed, replaced, or restored by Grantee, without cost to County, as provided in Section 9(B), in as good condition as before Grantee's entry and to the satisfaction of County.

#### **Section 21: ASSIGNMENT/TRANSFER**

Grantee shall not assign or transfer any interest in the Franchise without the prior written consent of Grantor. Grantor shall not unreasonably withhold its consent to a proposed transfer.

#### **Section 22: NOTICE**

Notices required under the Franchise shall be delivered or sent by certified mail, postage prepaid to:

Grantor:

Clerk of the Pinal County Board of Supervisors  
P.O. Box 827  
31 N. Pinal  
Florence, Arizona 85232

Grantee:

Global Water – Picacho Cove Water Company  
Attn: Graham Symmonds  
21410 N. 19<sup>th</sup> Ave., Ste. 201  
Phoenix, Arizona 85027

The delivery or mailing of such notice shall be equivalent to direct personal notice and shall be deemed to have been given at the time of delivery. Either party may change its address under this section by written notice to the other party.



### Section 23: REMEDIES

Rights and remedies reserved to the parties by the Franchise are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the parties may have with respect to the subject matter of the Franchise and a waiver thereof at any time shall not affect any other reservation of rights or remedies.

---

### Section 24: RIGHT OF INTERVENTION

County hereby reserves to itself, and Grantee hereby grants to County, the right to intervene in any suit, action, or proceeding involving any provision in the Franchise.

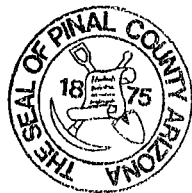
### Section 25: BOOKS AND RECORDS

Grantee shall maintain books and records that identify all of Grantee's underground facilities by type and location within the Franchise Area. Grantee shall make such books and records available to County upon County's request and without cost to County.

### Section 26: AD VALOREM TAXES

Grantee shall pay its ad valorem taxes before they become delinquent.

IN WITNESS WHEREOF, the Board of Supervisors of Pinal County, Arizona, by its Chairman and its Clerk, thereunto duly authorized, has hereunto set its hand and caused its official seal to be affixed on April 15, 2009.



PINAL COUNTY BOARD OF SUPERVISORS

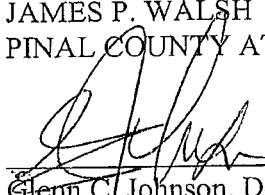
David Snider  
Chairman

ATTEST:

Sheri Cluff  
Sheri Cluff, Clerk of the Board

APPROVED AS TO FORM:

JAMES P. WALSH  
PINAL COUNTY ATTORNEY

 3-31-09  
\_\_\_\_\_  
Glenn C. Johnson, Deputy County Attorney

---

S:\attyciv\KRIS\GLENN\Franchise Agreements\Global Water Franchise Agreement.doc

## Exhibit A

Picacho Cove Water Company  
Picacho Cove Utilities Company  
Franchise Legal Description

Township 6 South Range 8 East

~~All of Sections 25 through 27, and 34 through 36~~

---

Township 6 South Range 9 East

The W ½ of Section 29, all of sections 30 and 31, and the W ¼ of 32

Township 7 South Range 8 East

All of Sections 1 through 3, 10 through 15, 22 through 27, and 34 through 36

Township 7 South Range 9 East

Sections 4 through 9, 15 through 22, all of sections 27 through 34.

Township 8 South Range 8 East

Sections 1 through 3, 10 through 15, NE ¼ of 22, and all of 23 through 25.

Township 8 South Range 9 East

Sections 4 through 9, 16 through 20, W ¼ of 21, all of sections 28 through 30, NE¼ of 31, all of sections 32 and 33, and the S ½ of 34.

Township 9 South Range 9 East

Sections 1 through 4, NE ¼ of 5, and all of section 10

Township 9 South Range 10 East

Sections 1 through 6, and sections 8 through 17.

Approximately 63,629 acres.

Exhibit B

ACCEPTANCE OF FRANCHISE

To: Board of Supervisors Pinal County, Arizona

Grantee, Global Water – Picacho Cove Water Company, an Arizona corporation, does hereby accept the non-exclusive grant of a new public water franchise from Pinal County, Arizona, (hereinafter "Franchise"), to construct, operate, and maintain water utility lines and related fixtures along, under, and across present and future public streets, alleys, and highways, except state highways, within the unincorporated area of Pinal County, Arizona, as stated in its application for a new public water franchise.

Grantee unconditionally accepts the Franchise and covenants to faithfully comply with, abide by, to observe and perform all the provisions, terms, and conditions of the Franchise. Grantee accepts such provisions, terms, and conditions and expressly waives any and all objections to the reasonableness or legality of any provisions of the same or any part thereof, or as to the legal right or authority of Pinal County to impose the same.

Grantee declares that the statements and recitals in this Franchise are correct, and Grantee declares it has made and does make the agreement, statements, and admissions in this Franchise recited to have been or to be made by Grantee.

Dated this 16<sup>th</sup> day of April, 2009.

GLOBAL WATER – PICACHO COVE  
WATER COMPANY, an Arizona corporation

By: Cindy M. Wiles

Title: Sec/Treasurer

STATE OF ARIZONA       )  
                                      ) ss.  
County of Pinal Maricopa)

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of April, 2009, Cindy M. Wiles of Global Water – Picacho Cove Water Company, an Arizona corporation, and being authorized to do so, executed the foregoing instrument on behalf of the company for the purposes therein stated.

Jennie L. Perez  
Notary Public

My Commission Expires: 7/10/2012

